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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,557	02/26/2002	Minoru Tsuruta	15226	7971
7590	11/17/2004		EXAMINER	
Paul J. Esatto, Jr. Scully, Scott, Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			SAM, CHARLES H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/084,557	TSURUTA, MINORU	
	Examiner	Art Unit	
	Charles H. Sam	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 5/19/04.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 22 and 27-35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 22 and 31 is/are allowed.
 6) Claim(s) 27-30 and 32-35 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/26/04 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 27-29,32,33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenichiro et al. (JP1989-172813). Kenichiro discloses as shown in figure 4 a medical retrieval instrument 10 comprising filaments 16, fixing member 17 provided in the distal end portion of the sheath 1 for fixing one end of the filaments 16, and operation wire 2 provided inside of the sheath for operating the filaments through forward and backward movements.

Regarding claim 28, Kenichiro discloses the accommodation part having a groove formed between the distal end of the sheath 1 and part member 17.

Regarding claim 29, Kenichiro discloses the accommodation part having a hole formed between the distal end of the sheath 1 and part member 17.

Regarding claims 32,33-35, Kenichiro discloses an operating wire 2 for operating the filaments 16 through forward and backward movements, a sheath 1 in which the operating wire 2 is provided, and the fixing member 17 is provided in the distal end portion of the sheath.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenichiro et al. (JP1989-172813) in view of Avellanet (6,264,664). Kenichiro discloses the invention as claimed except for the adhesive. However, Avellanet discloses a surgical basket device comprising the filaments 28 adhering with adhesive to the attachment portion 56. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Kenichiro by using adhesive to attach the end of the filament to the distal end of the sheath in view of Avellanet to provide ease in connecting the filament to and disconnecting the filament from the distal sheath.

Allowable Subject Matter

3. Claims 22 and 31 are allowed.

Response to the Applicant's Remarks

The applicant arguments filed on 5/19/04 have been fully considered but they are not persuasive. The arguments regarding the Kenichiro reference are not convincing

since this reference teaches the accommodating part such as hole or groove formed between the fixing member 17 and the distal end of the sheath 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles H. Sam whose telephone number is (571) 272-4703. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

chs

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September 10, 2004


KEVIN T. TRUONG
PRIMARY EXAMINER